



U.S. Department
of Transportation
**Federal Aviation
Administration**

Mike Monroney
Aeronautical Center

P.O. Box 25082
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no N#
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January 8, 2002

Susan H. Haught, Esquire
Daugherty, Fowler, Peregrin & Haught, P.C.
204 North Robinson
900 City Place
Oklahoma City, OK 73102

Dear Ms. Haught:

Recently you posed a question regarding trustee removal clauses contained in trust agreements. Essentially your question was whether a clause stating "the trustee may be removed for cause" is sufficient to satisfy the intent of Title 14, Code of Federal Regulations, Section 47.7(c) (the Regulations) where the beneficiary is a non-citizen.

For the reasons discussed below, I respond in the negative and advise that in any circumstance where there is a non-citizen beneficiary, the trust agreement must restrict exercise of removal powers to situations involving "cause." By way of example, a clause providing "the trustee may only be removed for cause" would be considered an acceptable restrictive clause.

Title 14, Code of Federal Regulations, Section 47.7(c)(3) provides and requires that:

If persons who are neither U.S. citizens nor resident aliens have the power to direct or remove a trustee, either directly or indirectly through the control of another person, the trust instrument must provide that those persons together may not have more than 25 percent of the aggregate power to direct or remove a trustee. Nothing in this paragraph prevents those persons from having more than 25 percent of the beneficial interest in the trust.

Historically, the Aeronautical Center Counsel's office has viewed a person's ability to remove a trustee as the

pinnacle of control and power. Therefore, consistent with Section 47.7(c)(3) of the Regulations, the power to remove must be limited by other means to not more than 25 percent in the aggregate.

In reviewing trust law I find it is a basic principle that a trustee may always be removed for breach of trust. In my opinion, a restatement of that basic principle does not serve to limit the power to remove as required by the Regulations. I therefore conclude the most effective way to satisfy the intent of Section 47.7(c) of the Regulations, is to limit the exercise of removal powers to "cause" situations. For these reasons, henceforth, in situations where there are non-citizen beneficiaries, trust agreements submitted under 14 CFR 47.7(c) must restrict removal rights to situations involving "cause."

This letter opinion has no retroactive effect, however, I recognize there are numerous previously submitted trust agreements containing a removal clause that does not meet the standard articulated herein. For the basic reason that those trust agreements were submitted and found sufficient under the then existing standard, this office does not consider it necessary to amend or modify them to comply with the standard articulated herein.

If you have questions or comments, you may contact the undersigned at 405-954-3296.

Sincerely,
Joseph R. Standell,
Aeronautical Center Counsel

By:


Michael R. Burton
Senior Attorney